IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 852 OF 2007
WITH
CRIMINAL APPLICATION NO. 1007 OF 2007

Shri Udaysingh @ Udaynath
Maharaj Prataprao Chavan ..Applicant
V/s
The State of Maharashtra ..Respondent.

Mr. Shirish Gupte, Sr. Counsel with Mr. K.V. Reddy Advocate for the applicant.

Mr. V.B. Konde Deshmukh, APP for the State.

Mr. V.T. Tulpule, Sr.Counsel for the intervenor.

CORAM : J.H. BHATIA, J.

DATE : 5TH APRIL, 2007.

P.C.

. Both these applications are filed for anticipatory bail by the same applicant. As the facts and circumstances, are common to both the cases, both these applications may be disposed of by common order.

2. Heard Mr. Gupte, Senior Counsel for the applicant, Mr. Konde Deshmukh, APP for the State and Mr. Tulpule, Senior Counsel for the intervenor, who is complainant. Perused the affidavits-in-reply filed on behalf of the prosecution, as well as the orders passed by the Sessions Court, while rejecting the application

for anticipatory bail.

3. The prosecution case, in brief, is that on 25/2/2007, Assistant Police Sub-Inspector, Kumar Sawant, who was posted with Juhu Police Station, got information from the police informer that on the same day at about 8 P.M. four persons with the fire arms and other deadly weapons were likely to come to Juhu Bus Depot for the purpose of committing murder of one businessman near Sun and Sand Hotel at Juhu. The informer also gave the detailed description of these four persons. This information was passed on by ASI Kumar Sawant to the Assistant Police Inspector Sahil, who in turn conveyed the information to the Additional Commissioner of Police. After getting the necessary directions, API Sahil along with other staff members and ASI Kumar Sawant laid a trap near Juhu Bus Depot. The informer was also present with ASI Sawant. At about 8 P.M., four persons came near Chinese Stall, near Juhu Bus Depot. They were making some gestures to each other. At that time, the informer confirmed that they were the same persons, who were expected to commit murder of businessman. Immediately, the police party encircled and caught hold of those 4 persons. ASI Sawant

disclosed the identity of himself and other police officers. At that time, one of the said four persons took out a revolver and fired towards API Sahil and taking benefit of this, all the four persons began to run away. The person, who had fired ran away towards Juhu but remaining persons could not succeeded in running away. The person, who had fired was also caught by PSI Koli and one police constable.

4. After that in presence of two panch witnesses personal search of each of the four persons were taken. The person, who had fired, disclosed his name as Mohammmed Nisar Mohammed Jafar Shaikh and he is accused No.1. From his possession one country made revolver with two live and one empty cartridges, amount of Rs. 50,000/-, a Chit having some vehicle numbers and Mobile phone etc. were found and seized. The other three accused were Aslam Sidhiki Khan, Kasim Peer Mohammed Kureshi and Vijay Shankar Wadekar. From Aslam Siddhiki amount of Rs. 50,000/- in one pocket and amount of Rs. 2010/- in another pocket with stainless steel chopper admeasuring 33 cms. were recovered. From accused No.3 Kasim Peer one mobile hand set and amount of Rs. 3,250/- and stainless steel knife were recovered. From

Accused NO.4 Vijay Shankar Wadekar amount of Rs. 1,50,000/-, mobile hand set and one colour photograph of some unknown person with vehicle number as the backside were recovered. Statements of six witnesses have been recorded.

5. During the interrogation of the accused persons, it was revealed that the present applicant had engaged the contract killers by promising the payment of Rs.50 lakh to them to Kill one Rashmikant Shah, a builder, who was developing Abhyudaya Nagar, Kala Chowky under Slum Rehabilitation Scheme. One Rajendra Chuturvedi, the owner of Shripat Builder and the present applicant are close to each other. Rajendra Chuturvedi wanted to take over the work of development of Abhyudaya Nagar Colony and for this purpose he took help of the present applicant, who had some influence in that area. From time to time, said Rajendra Chuturvedi and the present applicant gave threats to Rashmikant Shah to withdraw from the work but when the threats did not work, they finally decided to finish him. The present applicant, being acquainted with accused No.4, entered into contract with accused Nos 1 to 3 though accused No.4 and promised to pay them Rs. 50 lakh, after Rashmikant Shah

was killed.

6. Admittedly, due to the interception by the police, in view of the information received through informer, the contract could not be executed and Rashmikant Shah is alive. In fact no attempt to commit his murder could be made because of arrest of the four persons by timely action of the police.

7. Immediately after the above incident a report was lodged by ASI Kumar Sawant and Crime No. 42/2007 was registered for the offence punishable under Section 307, 353 r/w section 34 and under the provisions of Arms Act. After interrogation of the accused persons and revelation of the fact that the present applicant had given a contract to those four persons to kill Rashmikant Shah, on the basis of FIR lodged by PSI Koli, Crime No. 49/2007 came to be registered under Section 120B r/w section 302, 115 of Indian Penal Code and under the provisions of Arms Act and the Bombay Police Act. Thus about the same incident two separate crimes came to be registered. In view of this, the applicant has filed two separate applications for anticipatory bail. Before going to the merits of the present applications, it is

necessary to set the record straight, as far as legal position is concerned. Admittedly, in the present case, Rashmikant Shah was not killed, no other person was killed. Therefore, section 302 IPC could not have been applied. Accused Nos 1 to 4 allegedly came near Juhu Bus Depot with a plan to kill Rashmikant Shah, as per the contract made by the present applicant and before they could execute that contract, they were intercepted and had on encounter with the police in which all the four accused persons were arrested. One of them fired at API Sahil but fortunately API Sahil escaped unhurt. However, the revelation of the contract to kill Rashmikant Shah came to the light during the interrogation of the accused persons. It was clear that all those acts were parts of same transaction and conspiracy. Therefore, there was no need to register the separate crime on fresh F.I.R. by PSI Koli. After some discussion at Bar Mr. Konde Deshmukh, learned APP makes a statement that crime NO. 49/2007 shall be merged in Crime No. 42/2007, section 302 will be deleted and Crime No. 42/2007 shall be for the offence punishable under Sections 120B, 115, 307, 353 r/w section 34 of Indian Penal Code and under the provisions of Arms Act and Bombay Police Act. In view of this

submission, we may proceed with the presumption that Crime No. 49/2007 would be no more in existence and it will become part of Crime No.42/2007 only. In view of this, it will also not be necessary for the applicant to seek anticipatory bail or bail in future in two different crimes. He may move an application for anticipatory bail or bail in future in Crime No. 42/2007 only.

8. Mr. Gupte, learned Senior Counsel vehemently contended that Abhyuday Nagar Colony was to be developed for 3500 peoples and the work of development of that colony was given to Rashmikant Shah about five years before by the Slum Rehabilitation Authority. However, in spite of having taken such a long time, he has not made any substantial development and large number of people expecting the house under the scheme are awaiting for development of the Colony and allotment of the house. The present applicant is a spiritual person and because of that he is highly respected among the people of that area. He contended that taking into consideration the difficulties faced by such a large number of poor peoples, the present applicant requested Rashmikant Shah to speed up the work and if he could

not, he should withdraw from the work, so that the work of the development could be completed at the earliest. This was not liked by Rashmikant Shah. He has falsely implicated the present applicant in this alleged offence, which was never committed. The learned Senior Counsel vehemently contended that even though the four persons were caught, only after the identity of the police was disclosed to them, one of them abruptedly whipped out a fire arm and fired towards the police officer. This was his individual act for which others cannot be implicated with the help of section 34 IPC and particularly, the present applicant, who was not at all present at the spot, could not be held guilty with help of section 34 of IPC. On the other hand, on behalf of the prosecution, it is urged that four persons had come to the spot and were to commit the murder of Rashmikant Shah, as per the contract given to them by the present applicant and in the course of execution of that work when they were intercepted and caught one of the accused fired at the police officer and therefore, the present applicant will be held responsible for all the acts, done by those persons. This question may be properly addressed to and appreciated after investigation is completed or when the accused are required to face the

trial. It will not be appropriate to make any comments about the acceptance or otherwise of the contention of both the parties.

9. It has to be borne in mind that presently the investigation is only at the preliminary stage and serious allegations has been made against the present applicant to the effect that he had engaged four contract killers with a promise of the payment of Rs. 50,00000/- for murder of Rashmikant Shah, a rival builder. The defence of the accused/applicant cannot be taken into consideration at this stage. The applicant's statement and statement of one of the accused, which is recorded by the police reveals several serious things and the statement of Rashmikant Shah, which was recorded only after the facts were revealed by the accused persons in interrogation, shows that on number of occasions prior to this incident, the present applicant and one Rajendra Chuturvedi had tried pressurise to withdraw Rashmikant Shah from the work of development of Abhyudaya Nagar Colony and to create the terror in his mind for this purpose, they had also sent some persons to his office from time to time. It appears that as these attempts had failed. the present applicant took

services of accused No.4 who was his old confident and follower. It appears that he had relations with a criminal gang. With the help of accused No.4, accused Nos. 1 to 3 were engaged as contract killers. Amount of Rs. 50,00000/- was to be paid after the work would be completed. As noted earlier at the time of incident, accused Nos. 1 to 3 were found in possession of fire arms and other deadly weapons like chopper, knife. Amount of Rs. 1,50,000/- was found in possession of accused No.4 and heavy amounts were also found in possession of accused Nos. 1 and 2. Possibly that amount which was given in advance. Taking into consideration the fact that several criminal gangs and gangsters have been operating in this city for a long time making the life of the ordinary citizen difficult, it is not impossible that some contract killers might have been entrusted such work. This appears to be result of business rivalry between the two builders for the rights to develop the colony under Slum Development Scheme.

10. Taking into consideration the gravity of the matter, custodial interrogation of the present applicant appears to be absolutely essential. His defence cannot

be taken into consideration at this stage. If anticipatory bail is granted, it may create difficulties in proper investigation of the case and in finding out the truth. Therefore, I find that it is not a fit case to grant anticipatory bail.

11. For the reasons stated above, application Nos. 852/2007 and 1007/2007 are rejected.

(J.H. BHATIA, J.)